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10/584,215	07/24/2006	Martin Mastenbrock	2005-1037	9728
⁴⁶⁵ YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314			<div>EXAMINER</div> <div>CHAVCHAVADZE, COLLEEN MARGARET</div> <div>ART UNIT</div> <div>PAPER NUMBER</div> <div>3634</div>	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/584,215
Filing Date: July 24, 2006
Appellant(s): MASTENBROEK, MARTIN

James J. Livingston, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 1st, 2011 appealing from the Office action mailed April, 1st, 2011.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The appellant's listing of finally rejected claims on appeal in the brief incorrectly lists claim 56 as being finally rejected and on appeal. Claim 56 is withdrawn, and claim 46 should have been listed in place of claim 56 in the last line of (iii) on page 4 of the appellants brief. A correct listing is provided below for clarification.

The following is a list of claims that are rejected and pending in the application:

Claims 38-57 are pending; of these claims:

Claims 38-43, 45 and 46 were finally rejected and the final rejection of these claims is being appealed.

Claims 47-51 stand objected to as being dependent from rejected based claims but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 44 and 52-57 are withdrawn from further consideration.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The Examiner notes that the Claims Appendix presented by the Appellant in the Brief does not list claims 44 and 52-57 with their proper claim heading of (Withdrawn).

Claims 44 and 52-57 should include their proper heading, listing them as (Withdrawn)

(8) Evidence Relied Upon

DE 201 09 056

Zink

Oct. 11, 2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

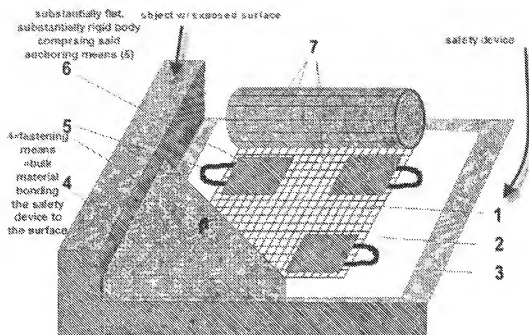
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

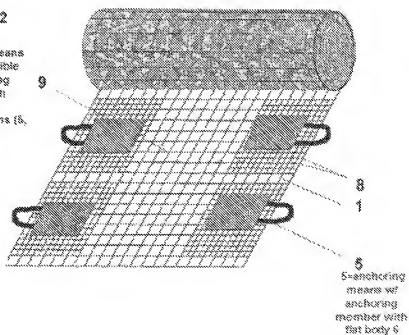
Claims 38-43, 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Zink (DE 201 09 056- machine translation attached & annotated figures of reference below). Zink discloses an object with an exposed surface (building roof/wall; best seen in figure 1); provided with a safety device (figures 1 & 2) for attachment of a fall restraint, comprising: anchoring means (5) to which the fall restraint can be coupled directly or indirectly, and fastening means (9) that make a firm and durable connection to said object (figure 1), the fastening means comprise a flexible fastening flap (plastic/mesh roll-out layer 9) which extends around the anchoring means (figures 1 & 2) and that leaves the exposed surface puncture free (figures 1 & 2 & annotated sections of attached translation); the flap being locally bonded to said exposed surface via wall covering materials (2 & 3); the flap (9) also being of a wall covering material (figure 1); wherein the wall covering materials comprise a plastic roof covering (see annotated translation attached); wherein the anchoring means further comprises a substantially rigid substantially flat body (6) provided with the anchor member (figures 1 & 2); the flap (9) extending laterally from the body adhering to the surface (figures 1 & 2) and wherein the anchoring member (5) is selected from the group of a threaded end, a fixing eyelet, a cable guide and a cable bushing (see eyelets 5 in figures 1 & 2).

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Figur 2

8=fastening means which is a flexible flap extending laterally with respect to anchoring means (5, 6)



(10) Response to Argument

The Appellant's arguments filed September 1st, 2011 have been considered but are not found persuasive for the following reasons:

The appellant primarily argues that Zink does not anticipate the appellants claims because Zink does not disclose a flexible flap to be "glued, welded or otherwise locally bonded to said exposed surface of said object to render a firm and durable connection" or an anchoring member selected from the group of a threaded end, fixing eyelet cable guide and cable bushing. Appellant also repeatedly argues that the bulk material bonding system of Zink is not "physically bonded". Examiner notes that appellant does not claim "physically bonded" and in fact includes the bonding options of "otherwise bonded" as discussed below.

In response against the alleged lack of bonding between the safety device and the exposed surface the Examiner once again notes that the appellant is not claiming any specific physical bond and does not provide any special definition of bonding in his disclosure.

Although the appellant claims the fastening flap is **"or otherwise locally bonded"** (independent claim 38) and **"or otherwise bonded"** (independent claim 45), the appellant repeatedly argues the bond must be a physical bond, that of gluing, welding, bolting or nailing. Such arguments limiting the bonding options to only physically gluing, welding, bolting or nailing are not persuasive since the claims clearly recite the flap can be otherwise bonded which clearly leaves the bonding options open to ballasting systems, layers of material to weight/bond something in place (i.e.: layers of stone or brick) magnetic bonding, hook and loop fastening bonding, chemical bonding, etc. If the appellant wanted to limit the bonding to gluing, welding nailing or bolting he should have made that clear in the claims since one of ordinary skill understands there are many "bonding" options for bonding two elements or layers together such as the numerous named in the lines above.

Additionally, as previously provided in the Advisory action of June 29th, 2011, the Examiner notes out the many definitions of the terms "bond" and "fasten" there are. A listing is provided once again at the end of these remarks.

Examiner also notes that the reference of Zink repeatedly discloses that the safety device and bulk material that bonds/holds/fastens the device to the exposed surface is present to "lead to a resistance against the withdrawal" of the safety device, to safeguard against a fall and provide stable attachment points (see annotated lines of attached translation).

From <http://www.thefreedictionary.com/bonded>:

bond (b nd) n.

1. Something, such as a fetter, cord, or band that binds, ties, or *fastens things together*.
2. Confinement in prison; captivity. Often used in the plural.
3. A *uniting force* or tie; a link: the familial bond.
4. A binding agreement; a covenant.
5. A duty, promise, or other obligation by which one is bound.
6. a. A substance or agent that causes two or more objects or parts to cohere.
b. The union or cohesion brought about by such a substance or agent.
7. A chemical bond.
8. A *systematically overlapping or alternating arrangement of bricks or stones in a wall, designed to increase strength and stability*.

fas,ten (fs n)

v. fastened, fastening, fastens

v.tr.

1. To attach firmly to something else, as by pinning or nailing.
2. a. To make fast or secure. b. To close, as by fixing firmly in place.

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3. To fix or direct steadily: fastened her gaze on the stranger.

4. To place; attribute: fastened the blame on the weather.

5. To impose (oneself) without welcome.

v.intr.

1. *To become attached, fixed, or joined.*

Regarding the appellants arguments directed to the alleged lack of "anchoring member" being of a threaded end, fixing eyelet, cable guide and cable bushing the examiner responds that Zink clearly discloses the anchor members 5 to be fixing eyelets for attachment of a safety line as can clearly be seen in Figures 1 & 2 of Zink and as disclosed in the description (page 2 of attached translation, lines 1-5).

Lastly, Appellant argues that anchor member 5 of Zink cannot be considered a "substantially flat, substantially rigid body which comprises said anchoring means". This argument hold no merit since the Examiner *did not cite the member 5 as being the "substantially flat, substantially rigid body which comprises said anchoring means" but rather the examiner named element 6 as the "substantially flat, substantially rigid body which comprises said anchoring means".*

For at least these reasons the Examine believes that the noted claims are still anticipated by the named reference.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Colleen M. Chavchavadze

/COLLEEN M CHAVCHAVADZE/

Examiner, Art Unit 3634

Conferees:

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